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April 29, 2003

Rhonda L. Vosdingh
Associate General Counsel
Enforcement
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463-0001

Attn: April J. Sands, Esq.
Office of General Counsel

Re: **MUR 5357/Centex Corporation**

Dear Ms. Sands:

This is the response of Bruce Moldow to the Commission's notification that a complaint has been filed by Centex Corporation regarding possible violations of the Federal Election Campaign Act of 1971 as amended (the "Act") at a Centex subsidiary called Centex-Rooney Construction Company Inc. ("Rooney"). Also submitted in support of this response is a sworn affidavit of Mr. Moldow. For the reasons set forth below, we urge that the Commission conclude that no action should be taken against Mr. Moldow on the basis of the instant complaint.

Introduction

Bruce J. Moldow is an attorney who graduated cum laude from Georgetown University Law Center in May 1986. He received a Bachelor of Science in accounting from the University of Maryland in May 1982. He originally worked as a staff accountant at Price Waterhouse in Washington, DC before attending law school. After law school he worked for several years at the D.C. offices of Arent, Fox, Kintner, Plotkin and Kahn. In 1990, Mr. Moldow went "in-house" at the Clark Construction Group in Bethesda, Maryland, where he served ultimately as Vice President and General Counsel.

Mr. Moldow joined Rooney in October 1996 as an Executive Vice President and General Counsel. In January 2000 he was promoted to a Senior Vice President and Co-Chief Legal Officer of Centex Construction Group, while keeping his General Counsel position at Rooney. Mr. Moldow's duties as Rooney's General Counsel are as a Chief Administrative Officer. He has at various times supervised and managed operations,

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staffing, and policy and professional development for Rooney's legal, human resources, safety, asset management and risk management departments. Mr. Moldow reported to Bob Moss, Rooney's Chairman, President and CEO. Mr. Moldow was not involved, however, in Rooney's compensation and bonus decisions.

Mr. Moldow is married and has two (2) children. He is active in his community. He is a member in good standing of the District of Columbia and Maryland Bar Associations, and also of the American Corporate Counsel Association, the American Bar Association Section of Public Contract Law, the American Institution of Certified Public Accountants, and the D.C. Institute of Certified Public Accountants.

The Complaint/Background

In January 2003, the CEO of Centex directed its General Counsel to undertake an investigation into whether or not employees of Rooney may have been reimbursed with corporate funds for individual political contributions. Thereafter Centex retained the law firm of Arnold & Porter to assist in this investigation. The instant complaint contains the results of the Arnold & Porter investigation.

Rooney is a long-standing construction company with an excellent reputation which operates in and outside of the State of Florida. Bob Moss joined Rooney in 1986 as Chairman, President and CEO. In 2000, Mr. Moss was promoted to the position of Chairman and CEO of Centex Construction Group. Mr. Moss remained as Chairman at Rooney.

Gary Esporin joined Rooney around the same time as Mr. Moss and served as CFO of Rooney. Mr. Esporin was promoted in 2000 to co-CFO of Centex Construction Group but retained his position at Rooney. Mr. Esporin reported directly to Mr. Moss.

Rooney employees participated in several incentive compensation plans that paid bonuses to employees. A percentage of the bonus pool was reserved for discretionary bonuses. Mr. Moss and Mr. Esporin handled the bonus process. Mr. Moss reviewed and set the discretionary bonuses for the Rooney employees.

Rooney employees were encouraged to be active in their community affairs, including attending and participating in political fund-raisers, and making political and charitable contributions as part of Rooney's emphasis on relation-building and marketing. Mr. Moss and Mr. Esporin asked employees to keep them informed about these kinds of activities, including reporting the amounts of political contributions and to whom they were made.

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It turns out that Mr. Esporin kept track of contributions and calculated amounts that would reimburse employees for contributions, "grossing up" the amounts to offset tax liability. These calculations were set out on spread sheets Mr. Esporin maintained and apparently used when employee annual bonuses were determined. Centex and Arnold & Porter have concluded that contained within the large discretionary incentive compensation bonuses which some Rooney employees received were amounts that reimbursed for contributions made. The bonus checks did not show that this had occurred. Moreover, the Esporin spreadsheets were not shared with Rooney employees.

The complaint indicates that Bruce Moldow made three (3) political contributions for which he was apparently reimbursed:

\$500 to McCollum for Senate on November 19, 1999

\$500 to Gallagher for Senate on February 15, 2000

\$500 to Shaw for Congress on March 20, 2002

The complaint does not say that Mr. Moldow requested reimbursement for the making of these contributions. He did not. The complaint does not say that Mr. Moldow was aware he had been reimbursed. He was not. The complaint does not say that Mr. Moldow was involved in any way with the bonus process or consulted at any time about the propriety of making reimbursements. He was not.

Centex/Rooney

Centex and Rooney are highly regarded companies with no history of improper behavior. The companies maintain high ethical standards and have clear policies that business is conducted in accordance with both the letter and the spirit of all applicable laws. Rooney employees tend to stay at the company. Its executive officers have all been with Rooney for many years. Bob Moss and Gary Esporin had excellent reputations. Bruce Moldow and other Rooney employees are dedicated to the company, proud of its accomplishments, and committed to doing their jobs in an appropriate and professional manner.

Relevant Law

Pursuant to Section 441f of Title 2 of the Act, "no person shall make a contribution in the name of another or knowingly permit his name to be used to effect such a contribution..." Commission regulations made explicit that the prohibitions of Section 441f apply to individuals who help or assist in the making of contributions in the name of another. 11 C.F.R. § 110.4(b).

Pursuant to 2 U.S.C. § 441b, a corporation may not make a contribution in connection with the election of a candidate for federal office.

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In determining if and how to proceed with possible violations of the Act, the Commission looks at whether any violations in fact occurred and whether the violations of law are knowing and willful. When Congress amended the Act in 1976 to centralize the criminal penalties for violations of the Act, it was concerned about the complexity and technical nature of the statute and the potential that non-culpable people could be caught up in apparent violations of law. See 122 Cong. Rec 8577 (March 30, 1976 statement of Representative Rostenkowski). During the House debates on the Conference Report for the 1976 Amendments, Congressman Hays stated that the phrase "knowing and willful" referred to "actions taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec H 3778 (May 3, 1976 remarks of Congress Hays).

This strict and liability-limiting notion of what constitutes knowing and willful acts has been adopted by the Courts. See e.g., Federal Election Commission v. Friends of Jane Harman, 59 F. Supp 2d 1046 (C.D. Calif. 1999); Federal Election Commission v. John A. Dramesi for Congress Committee, 640 F. Supp 985 (D.N.J. 1986).

Pertinent Facts

Bruce Moldow occasionally contributes to political campaigns. In the years 1999, 2000 and 2002 he made one \$500 contribution each year to either a senate or congressional candidate. He made these contributions because he supported and believed in these candidates. No one promised him he would be reimbursed for making these contributions and he did not write checks expecting to be reimbursed.

Mr. Moldow was aware Rooney kept track of contributions its employees made. He viewed this fact as normal and proper. He provided information about his contributions to Gary Esporin. In doing so, Mr. Moldow did not expect or understand that this information would be used to reimburse him.

Mr. Moldow knew that Bob Moss reviewed and set the discretionary bonuses for Rooney employees and that community activities, including the making of political contributions, would be considered as a factor in the bonus process. Mr. Moldow did not believe there was anything inappropriate in the way bonuses were determined. He was not involved in the bonus process. He was not consulted or asked to render a legal determination about how bonuses were fixed. Mr. Moldow neither implemented, reviewed or approved Rooney's bonus program.

Mr. Moldow was unaware that Gary Esporin included amounts on the bonus spreadsheets to reimburse contributions. He did not even know that Mr. Esporin maintained such spreadsheets until January 2003 when Rooney's internal investigation

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began. Mr. Moldow was unaware that his discretionary bonuses for 1999, 2000 and 2002 included amounts reimbursing his contributions.

Analysis

The Commission is well familiar with cases involving allegations of companies reimbursing employees and third parties for political contributions. In determining what action to take, the Commission typically looks at evidence whether the "conduit employees" knew they were being reimbursed; knew their actions were illegal; and/or participated in acts of additional complicity. Cases where the Commission has taken action against the "conduit employees" have typically involved matters where there was clear evidence of knowledge and complicity. See e.g. MUR 2893 (Westwood One); and MUR 3508 (New Enterprise Stone and Lime Co.). Many such cases include evidence of falsification of company records in which employees played a part. In other cases, where there was no evidence of additional complicity by the "conduit employees", the Commission has elected to take no action, albeit sometimes issuing letters of admonishment. See e.g. MUR 4286 (General Cigar Co.); MUR 4884 (Future Tech Int'l); and MUR 5187 (Mattel Inc.).

Here, there is no evidence Bruce Moldow ever knew about the reimbursements, let alone that he thought he was doing anything improper. There is certainly no evidence Bruce Moldow did anything to further the "reimbursement scheme". Mr. Moldow made a total of three (3) federal contributions over a three year period totaling \$1,500. He tendered information about these contributions to Rooney's CFO because he thought it perfectly legitimate and understandable that the company would want to keep track of candidates to whose campaigns its employees were making contributions. It never occurred to Mr. Moldow that anything untoward was being done with this information, or that he should question his boss, in whom he had full faith and trust, about this. Bruce Moldow never thought he was doing anything even remotely inappropriate. He certainly never acted knowingly or willfully.

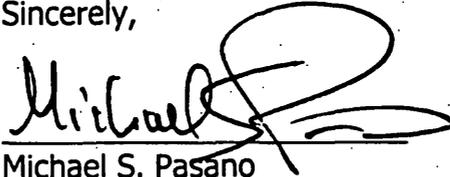
Conclusion

Bruce Moldow was unwittingly involved in a possible violation of the Federal Election laws at Rooney. Out of an abundance of caution, he has paid back to the company, with interest, amounts he has been told were reimbursed. No further action should be taken against him.

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If you have any questions, or require further information, please do not hesitate to contact me at 305-579-0110.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael S. Pasano". The signature is stylized with a large, looping initial "M" and a long, sweeping underline.

Michael S. Pasano
Counsel to Bruce Moldow

MSP:emt

Enclosure

03 04 406 3221

SWORN STATEMENT

I, Bruce Moldow, being duly sworn, state and aver as follows.

1. My name is Bruce J. Moldow.

2. I am a Executive Vice President and General Counsel at Centex Rooney Construction Company. I have worked at Rooney since October 1996.

3. My position at Rooney is more strategic and administrative than a traditional legal position. During my tenure at the Company, I have had a wide range of responsibilities including managing the Company's legal, human resources, safety, asset management and risk management departments. For years I was one of several senior officers who reported to Bob Moss, the former chairman of Rooney and former chairman and CEO of Centex Construction Group.

4. Gary Esporin is the former CFO of Rooney and former Co-CFO of Centex Construction Group. Esporin also reported directly to Mr. Moss. Moss and Esporin handled the financial side of Rooney. This included Rooney's incentive compensation plans and the determination of officers' and employees' bonuses. I was not involved in the compensation and bonus process.

5. I was aware that Mr. Moss encouraged officers and employees of Rooney to be active in the community, to take a role in politics and to make political charitable contributions, as a way of marketing themselves and the company. I was also aware that participating in such activities, including campaign contributions, and being

considered a "good corporate citizen" was to be a factor in the consideration and setting of officer and employee bonuses.

6. I was also aware that Mr. Moss wanted people to inform either him or Mr. Esporin of the contributions they made and to send copies of contribution checks and related correspondence to Mr. Moss or Mr. Esporin. I understood this information was used in order for the Company to know to whom and in what amounts contributions were being made.

7. I did not know that Mr. Esporin calculated amounts for Rooney to reimburse employees for contributions and that such amounts were included in the discretionary portion of bonuses employees and officers received. I was unaware that Mr. Esporin maintained spreadsheets that included a column for "discretionary management bonuses" and "grossed up" amounts to cover political contributions. I was unaware of and had nothing to do with such activities.

8. Between 1999 and 2002, I made three (3) campaign contributions in amounts of \$500 each to the Federal Campaigns of McCollum for Senate (on November 19, 1999); Gallagher for Senate (on February 15, 2000); and Shaw for Congress (on March 20, 2002). At some point I provided copies of my checks to either Mr. Moss or Mr. Esporin. I did not expect to be reimbursed for these expenses and did not ask to be reimbursed. I did not believe that I was doing anything wrong in providing this information.

9. I did not devise, implement or approve of this reimbursement program. During the course of Centex's investigation, I have been advised that amounts were

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included in my bonuses for these years that reimbursed me for these expenses. I did not know that had occurred.

10. At no time did I advise or encourage anyone that reimbursing campaign contributions was legitimate or that the Company could lawfully do this. At no time was I asked about this practice or consulted about its legality.

11. I am aware the Company has retained outside counsel and has notified the Federal Election Commission of potential violations of Federal Election laws. I have never been knowingly or willingly a party to any violation of law.

12. I have, however, at the Company's request, paid back with interest the amounts I am told were reimbursed to me.

FURTHER AFFIANT SAYETH NOT

Bruce J. Moldow
BRUCE J. MOLDOW, ESQ.

STATE OF Florida)

COUNTY OF Broward)

The foregoing instrument was acknowledged before me this 28 day of April, 2003 by Bruce J. Moldow, who is personally known to me or who has produced _____ as identification and who did take an oath.

Joanne L. Orcutt
Notary Public, at Large
State of Florida

Commission Seal:

Joanne L. Orcutt
Print Name

